

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES)
CORP.,)
)
Plaintiff,)
)
v.)
)
ZYNGA INC. and CHARTBOOST INC.,)
)
Defendants.)

SPECIAL MASTER ORDER #1

Having conducted a preliminary teleconference with the parties on January 10, 2024 regarding their disputes, the Special Master orders as follows:

(1) Based on the Special Master's preliminary teleconference with the parties, the Special Master understands that the four disputes below remain outstanding, IBM is the most logical movant on each dispute, and the parties have fully met and conferred about these disputes but are unable to reach agreement.

DISPUTES	MOVANT
1. Whether Zynga must produce notes taken in connection with development meetings of the accused Toy Blast and Toon Blast games, or whether Zynga need not produce these documents.	IBM
2. Whether Zynga must produce the load time studies for the accused games in its possession, such as studies prepared for the Merge Dragons and Merge Magic accused games, or whether Zynga need not produce these documents.	IBM
3. Whether Zynga must designate an additional witness to testify in response to Topic Nos. 6(c) and 64 of IBM's Rule 30(b)(6) Notice as those topics relate to the Merge Dragons and Merge Magic accused games, or whether Zynga has provided sufficient testimony responsive to those topics.	IBM
4. The extent to which the parties must narrow their respective infringement and invalidity cases pursuant to the Court's Scheduling Order.	IBM

(2) The Special Master will hold a videoconference hearing on disputes (1) through (3) on January 18, 2024 at 2 p.m. Eastern. Counsel for IBM will provide to the Special Master and all counsel of record a videoconference link (Zoom or Microsoft Teams) for this date and time. A court reporter will transcribe this hearing.

(3) In preparation for the hearing, the parties shall submit briefing as follows:

- a. IBM shall serve a single opening brief of no more than six (6) pages on disputes (1) through (3).¹ The opening brief shall be emailed to the Special Master and all counsel of record no later than 5 p.m. Eastern on January 12, 2024.
- b. Defendants shall serve a single answering brief of no more than six (6) pages on disputes (1) through (3). The answering brief shall be emailed to the Special Master and all counsel of record no later than noon Eastern on January 17, 2024.
- c. The briefs on issues (1) through (3) shall be served by email on the Special Master and all counsel of record. The briefs shall not be filed on the docket. No paper courtesy copies of the briefs or supporting documents shall be sent to the Special Master unless the Special Master requests them.

(4) Pursuant to the Order Appointing Special Master (D.I. 245, ¶ 3(a)), by 5 p.m. Eastern on January 12, 2024, IBM shall send the Special Master by email a formal motion for disputes (1) through (3). The motion should be no more than two pages, preferably a single page. IBM shall attach a proposed order to its motion setting forth the precise relief sought. The Special Master shall file the motion with the Court.

¹ The parties should follow D. Del. Local Rule 7.1.3 on formatting.

(5) For dispute (4), consistent with Judge Williams' discovery dispute procedures, IBM shall file (not serve) an opening letter of no more than three (3) pages, addressed to Judge Williams, setting forth the dispute(s), IBM's respective position on the dispute(s), and support for IBM's position. IBM shall file this opening letter brief no later than 5 p.m. Eastern on January 12, 2024. Defendants shall file (not serve) an answering letter of no more than three (3) pages, addressed to Judge Williams, outlining their reasons for opposition. Defendants' shall file their answering letter no later than noon Eastern on January 17, 2024. Judge Williams will decide whether the Special Master will decide dispute (4) after reviewing the submissions.

IT IS SO ORDERED.

Dated: January 10, 2024



Special Master Chad S.C. Stover